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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

United States of America,

Plaintiff,

vs. Criminal Action No.: 3:21-mj-138-2

Diana Toebe,

Defendant.

Proceedings had in the Initial Hearing in the
above-styled action on October 12, 2021, before the Honorable
Robert W. Trumble, Magistrate Judge, at Martinsburg,
West Virginia.

APPEARANCES

On behalf of the United States of America:

Jarod J. Douglas
Assistant United States Attorney
United States Attorney's Office
P.O. Box 591
Wheeling, WV 26003

Jessica Lieber Smolar
Assistant United States Attorney
United States Attorney's Office
700 Grant Street, Ste. 4000
Pittsburgh, PA 15219

The defendant was present in person.

Proceedings reported by means of digital recording; transcript
produced by computer-aided transcription.

1 (Digitally-recorded proceedings in open court.)

2 (October 12, 2021, 10:58 A.M.)

3 - - -

4 THE COURT: Good morning. Please be seated.

5 Tara, would you call the case for me, please.

6 THE CLERK: This is the case of the United States of
7 America versus Diana Toebe, Criminal No. 3:21-mj-138,
8 defendant 2.

9 The Government is represented by counsel, Jarod Douglas and
10 Jessica Smolar, Assistant United States Attorneys. The
11 defendant is present and in person.

12 Are the parties ready to proceed?

13 MR. DOUGLAS: The government is ready, Your Honor.

14 THE COURT: All right. Good morning. We're
15 scheduled this morning for an initial appearance on a complaint
16 this morning. And before we get started, I -- we have people
17 that are participating in this hearing by Zoom conference.
18 Anybody that's participating, please make sure that your
19 microphones are muted and your cameras are turned off and
20 remain so during the course of this hearing.

21 Ms. Toebe, do you understand English?

22 THE DEFENDANT: Yes.

23 THE COURT: My name is Robert Trumble. I'm the
24 United States Magistrate Judge. Would you stand and be sworn
25 by the clerk, please.

1 (The defendant was sworn in.)

2 THE DEFENDANT: Yes.

3 THE COURT: Thank you. Please be seated.

4 Ms. Toebbe, are you a citizen of the United States?

5 THE DEFENDANT: Yes.

6 THE COURT: Would you state your full name for the
7 record, please.

8 THE DEFENDANT: Diana Smay Toebbe.

9 THE COURT: Ms. Toebbe, what is your date of birth?

10 THE DEFENDANT: 12/23/1975.

11 THE COURT: And where do you reside? What is your
12 physical address?

13 THE DEFENDANT: 125 Boyd Drive, Annapolis, Maryland,
14 21403.

15 THE COURT: And do you have a telephone or contact
16 number where you can be reached?

17 THE DEFENDANT: I do not have possession of my cell
18 phone at this time. That's the only phone I have.

19 THE COURT: If you had a cell phone in your
20 possession, what would the number be?

21 THE DEFENDANT: 303-475-6859.

22 THE COURT: All right. Thank you.

23 Ms. Toebbe, all persons who are charged with a crime are to
24 be brought before a judge as soon as possible after their
25 arrest. This is an initial appearance. It's not a trial.

1 There's no determination of guilt or innocence here today. But
2 I am here to let you know of the charges that are pending
3 against you, to let you know you have a right to an attorney,
4 and determine whether you'll be released pending your trial or
5 whether we have to set a detention hearing.

6 Now, you are charged in a criminal complaint here in the
7 Northern District of West Virginia. There are two charges
8 contained in this complaint. One is conspiracy to communicate
9 restricted data in violation of Title 42, United States Code,
10 Section 2274(a), and the second is communication of restricted
11 data in violation of Title 42, United States Code, Section
12 2274(a).

13 Ms. Toebbe, the penalties for those, if you're found guilty
14 of those violations, the penalties for both of those would be
15 up to life imprisonment, a fine of \$100,000, and five years of
16 supervised release. And as I indicated that would apply to
17 both of those charges provided you're found guilty of those
18 charges.

19 I've provided for you in written form your constitutional
20 rights, and they should be on the table in front of you. Do
21 you have them there?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I'm going to read your constitutional
24 rights to you. I'd like you to follow along with me, please.

25 You have a constitutional right to remain silent. If you

1 give up your right to remain silent, anything you say can and
2 will be used against you in this or any other court of law.
3 Even if you may have given a statement to the police or others,
4 you have a constitutional right to make no further statement to
5 the authorities. If you start to make a statement, you have a
6 constitutional right to stop in mid-word or sentence and say no
7 more. You have a right to counsel to assist you in this
8 matter. If you cannot afford an attorney, you may qualify to
9 have an attorney appointed to represent you. And whether
10 appointed or retained, you have the right to the assistance of
11 counsel at every stage of the proceedings against you and
12 during any questioning by the authorities.

13 Do you understand your constitutional rights as I've read
14 them to you?

15 THE DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: All right. Thank you. You have a right
17 to retain counsel or ask that counsel be appointed for you if
18 you do not have the funds to hire an attorney. I have on my
19 bench a financial affidavit that appears to bear your
20 signature.

21 So first of all, did you, in fact, complete this financial
22 affidavit?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And is this your signature on the
25 financial affidavit?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is the information that you provided
3 concerning your income, assets, obligations, and debts true and
4 correct to the best of your knowledge, information, and belief?

5 THE DEFENDANT: To the best of my knowledge which is
6 very limited.

7 THE COURT: All right. Are there any errors,
8 omissions, mistakes, corrections that you need to bring to my
9 attention at this time?

10 THE DEFENDANT: Not that I'm able to do.

11 THE COURT: All right. I find that you qualify for
12 court-appointed counsel and will so order.

13 Mr. Douglas, is the government moving to detain Ms. Toebbe
14 pending her trial?

15 MR. DOUGLAS: Yes, Your Honor. We filed a motion.

16 THE COURT: All right. Ms. Toebbe, the government
17 has filed a motion to detain you pending your trial in this
18 matter. You're entitled to a detention hearing. We'll conduct
19 your detention hearing on Friday, October 15, 2021, and we'll
20 do that at 11:00 A.M. in the morning.

21 You're also entitled to a preliminary examination hearing
22 to determine whether there's probable cause that you committed
23 the offenses to which you are charged. We'll conduct your
24 preliminary examination hearing on Wednesday, October 20, 2021,
25 at 1:00 P.M.

1 Now, in the meantime, you will be held in the custody of
2 the U.S. Marshals Service, but you should have an opportunity
3 to meet with your court-appointed counsel to discuss not only
4 the charges that are pending against you but also to prepare
5 for your detention hearing and preliminary examination.

6 Ms. Toebbe, there's nothing further we can accomplish at an
7 initial appearance. So with that in mind, you are hereby
8 remanded to the custody of the U.S. Marshals Service, and we
9 stand adjourned. Thank you.

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11 (Hearing concluded at 11:14 A.M.)
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CERTIFICATE

I, Kate A. Slayden, Registered Professional Reporter and Official Court Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript to the best of my ability of the digitally-recorded proceedings had in the above-styled action on October 12, 2021, as transcribed by me.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Given under my hand this 12th day of October, 2021.

/s/Kate A. Slayden

Kate A. Slayden, RPR, CCR
Official Reporter, United States
District Court for the Northern
District of West Virginia